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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/531,359	04/13/2005	Kim Hansen	US020624 US	6512

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EXAMINER

KAHELIN, MICHAEL WILLIAM

ART UNIT	PAPER NUMBER
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3762

MAIL DATE	DELIVERY MODE
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02/24/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/531,359	Applicant(s) HANSEN ET AL.	
	Examiner MICHAEL KAHRELIN	Art Unit 3762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 December 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 13-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 13-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>20081217</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/17/2008 has been entered.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 13-28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In regards to claim 13, it is unclear whether the "prior to pad attachment" is referring to the "pad placement" limitation. It is suggested to use consistent terminology throughout the claim. In regards to claim 14, it is unclear whether the claim requires sensing handling of the pads a second time, or whether this refers to the "detecting" step of claim 13.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 13-19, 23, and 24 are rejected under 35 U.S.C. 102(b) as anticipated by Brewer et al. (US 5,700,281, hereinafter "Brewer").

6. In regards to claim 13, Brewer discloses prompting the user with a first electrode pad prompt (col. 8, lines 54-67), detecting prior to pad placement that the pad is being handled (Fig. 10), prompting the operator to conduct a pad placement action (col. 8, line 60), sensing that the operator has conducted the prompted action (col. 8, lines 54-67), and receiving an ECG signal following the placement (col. 8, line 60). Please note that Brewer's invention "knows what has been done and what needs to be done," and issues the voice prompts accordingly (col. 8, lines 57-58).

7. In regards to claim 14, the first prompt is a prompt to remove a cover ("package"; col. 8, line 59) and sensing comprises sensing that the pads are being handled (col. 8, lines 54-67 and Fig. 10).

8. In regards to claim 15, the first prompt is to pull a handle and remove a cover (col. 8, lines 59-60; removing the package and pulling the electrodes apart - an electrode is a "handle" because it can be gripped).

9. In regards to claim 16, the prompt in response to detecting pad handling ("please pull electrodes apart") prompts the operator to remove a pad (of the first electrode) from a liner (of the second electrode).

10. In regards to claims 17-19, sensing comprises sensing the contact state of the electrodes with each other by sensing an impedance signal (Fig. 10).

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11. In regards to claims 23 and 24, the pad correction prompt is to remove a pad liner (see claim 16 above), and must not be touching each other "pull electrodes apart" (col. 8, lines 59-60). The electrodes are only determined to be in proper contact with the subject if the impedance is that shown in element 414 of Figure 10 and the algorithm has reached the proper progression. As such, each of the other "stages" of Brewer's invention senses that the pads are not in proper contact with the subject.

Claim Rejections - 35 USC § 103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

14. Claims 20-22 and 25-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brewer. Brewer discloses the essential features of the claimed

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invention except for prompting the operator to look at the pictures on the pads, prompting the operator to place the pads as shown by icons on the pads, a pad correction prompt that the pads must not touch clothing, or repeating the prompts until the operator has conducted the prompted action. However, it is well known in the defibrillator art to prompt the operator to look at the pictures on the pads and prompting the operator to place the pads as shown by icons on the pads to provide the predictable results of easy-to-understand and easily accessible instructions, to provide a pad correction prompt that the pads must not touch clothing to provide the predictable result of ensuring that the electrodes have intimate and effective contact with the skin, and repeating the prompts until the operator has conducted the prompted action to provide the predictable result of indicating to the user when the directed action has been suitably performed. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Brewer's invention by providing a means to prompt the operator to look at the pictures on the pads and prompting the operator to place the pads as shown by icons on the pads to provide the predictable results of easy-to-understand and easily accessible instructions, to provide a pad correction prompt that the pads must not touch clothing to provide the predictable result of ensuring that the electrodes have intimate and effective contact with the skin, and repeating the prompts until the operator has conducted the prompted action to provide the predictable result of indicating to the user when the directed action has been suitably performed.

Response to Arguments

15. Applicant's arguments with respect to claims 13-28 have been considered but are moot in view of the new ground(s) of rejection, necessitated by amendment.

Conclusion

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Covey et al. (US 7,069,074) is one of many teachings of prompting operators with pictures on pads and indicating placement with icons on pads, and Freeman (WO 01/56652, previously cited) is one of many teachings of prompting users to look at pictures for pad placement, providing icons on pads for pad placement, providing a pad correction prompt that pads must not touch clothing, and repeating prompts until conditions are satisfied.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL KAHRELIN whose telephone number is (571)272-8688. The examiner can normally be reached on M-F, 8-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on (571) 272-4955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael Kahelin/
Examiner, Art Unit 3762

/Angela D Sykes/
Supervisory Patent Examiner, Art Unit 3762